

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ZACHARY RYAN GRAHAM,)	
)	
Plaintiff,)	Civil Action No. 21-cv-132
)	
v.)	District Judge Arthur J. Schwab
JOHN E. WETZEL <i>Secretary of Department</i>)	Magistrate Judge Maureen P. Kelly
<i>of Corrections; MICHAEL ZAKEN,</i>)	
<i>Superintendent of SCI Greene,</i>)	Re: ECF No. 12
)	
Defendants.)	

ORDER

Before this Court is the self-styled “Motion to Appeal and Objection of Order” filed by Plaintiff Zachary R. Graham (“Plaintiff”), ECF No. 12, in which Plaintiff appeals from the order of the United States Magistrate Judge granting Plaintiff’s motion for leave to proceed *in forma pauperis* (“IFP”). See ECF Nos. 8 and 11. Plaintiff also requests that this lawsuit be dismissed. ECF No. 12 ¶ 6. For the reasons stated below, the instant motion will be construed in part as an appeal from the order granting IFP status, and overruled and dismissed. The motion further will be construed as a motion to voluntarily dismiss this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and granted.

Plaintiff initiated the instant cause of action by filing a “Motion to Expedite Security Clearance” and a motion for leave to proceed IFP in the United States District Court for the Middle District of Pennsylvania, which was received on January 22, 2021.¹ ECF Nos. 1 and 2. On

¹ As Plaintiff notes in the present appeal, the initiating document in this matter is captioned as a motion directed to the Supreme Court of Pennsylvania. ECF No. 1 at 1. The envelope in which it presumably was mailed includes an address where the Chief Justice of the Pennsylvania Supreme Court has his chambers – and not that of a United States courthouse. Id. at 8. It thus is somewhat of a mystery how this matter initially came before the United States District Court for the Middle District of Pennsylvania. However, it is noteworthy that the initiating document matter – which was construed as a complaint both by this Court, and the Middle District of Pennsylvania – was

January 25, 2021, United States District Judge Yvette Kane issued an Order transferring this case to the United States District Court for the Western District of Pennsylvania because the allegations set forth in Plaintiff's complaint, and the named Defendants therein, concern events occurring at the State Correctional Institution at Greene, which is located in Greene County in the Western District of Pennsylvania. ECF No. 5.

Plaintiff's initial IFP motion, ECF No. 2, was deficient, and the Court issued a deficiency order on February 8, 2021. ECF No. 7. On February 10, 2021, a second IFP motion was docketed, as well was Plaintiff's prisoner trust account statement, which corrected those deficiencies.² ECF Nos. 8 and 9. A second trust account statement was docketed on February 19, 2021, and was sent in an envelope dated February 12, 2021. ECF Nos. 10 and 10-1. The Court granted the second motion for leave to proceed IFP on February 26, 2021. ECF No. 11.

Plaintiff now appeals the order granting his motion to proceed IFP. Plaintiff asserts that he submitted a state court IFP form motion that does not require verification or an account statement, and that he never submitted a proper IFP motion and account verification in this matter in the Middle District or before this Court. ECF No. 12 ¶¶ 4 and 5. This argument is belied by the motion and two account statements that he submitted at ECF Nos. 8, 9, and 10. It is the later IFP motion at ECF No. 8, which was written on a federal AO 240 form, submitted with an account statement, and which met the standards of 28 U.S.C. § 1915, that was granted by the Magistrate Judge. ECF No. 11.

accompanied by federal AO 399 waiver of service of summons forms completed in Plaintiff's handwriting. ECF No. 1-2.

² The second IFP motion was written on a federal AO 240 form from the United States District Court for the Middle District of Pennsylvania, on which the word "Middle" in the caption was scratched out, and the word "Western" handwritten in. ECF No. 8 at 1. It was signed by Plaintiff on January 29, 2021, and by the prison's financial officer on February 2, 2021. Id. at 3.

Thus, the Court's order granting IFP at ECF No. 11 was neither clearly erroneous nor contrary to law, and Plaintiff's appeal therefrom will be overruled and dismissed.

Next, Plaintiff asks that this case be dismissed. ECF No. 12 ¶ 6. Rule 41(a) of the Federal Rules of Civil Procedure allows a Plaintiff to dismiss a civil action voluntarily, without action by the court, by filing a notice of dismissal before an opposing party serves an answer or motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). Here, the complaint has not yet been served. As such, Plaintiff is entitled to dismiss this action without the intervention of this Court. That Plaintiff chose to file a motion rather than a notice does not change the fact that Plaintiff is entitled to voluntary dismissal at this stage in the proceeding. As such, the same will be granted, and this case will be dismissed without prejudice.

Accordingly, the following order is entered.

AND NOW, this 19th day of March, 2021,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Appeal and Objection of Order, ECF No. 12, is GRANTED IN PART, and DENIED IN PART.

IT IS FURTHER ORDERED that Plaintiff's appeal from the Magistrate Judge's Order granting leave to proceed *in forma pauperis* is OVERRULED and DISMISSED.

IT IS FURTHER ORDERED that Plaintiff's motion to dismiss this case is GRANTED. The instant action is DISMISSED, WITHOUT PREJUDICE to Plaintiff's refiling of the same. Plaintiff is advised that, pursuant to Federal Rule of Appellate Procedure 4(a), Plaintiff has 30 days from the date of this order to file notice of appeal.

IT IS FURTHER ORDERED that the Clerk's Office is directed to mark this case CLOSED.

Dated: March 19, 2021

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: Hon. Maureen P. Kelly

Zachary Ryan Graham
NP-2097
SCI-Greene
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